

Pentagon Papers
NY Times on
June 13, 1971, ~~and~~
a Sunday

*Chronology - Pentagon
Papers leak.*

NSA review completed

DOJ REVIEW COMPLETED

OGC Has Reviewed

State Dept. review completed



State Dept. review completed





15 May 1974

MEMORANDUM FOR: Dr. Donald Chamberlain
Inspector General

SUBJECT: My Participation in the Ellsberg Trial

1. On 26 March, you circulated a memorandum requesting a further review of Agency files "for material connected in any way with what has come to be called 'Watergate'." In the guidelines appended to the memorandum, you indicated that your request covered:

"...any and all information in Agency files related to Ellsberg, including the requests for and preparation of the profiles on Ellsberg, the case of the so-called Pentagon Papers, damage assessments, Agency associations, the Ellsberg trial."

2. As I believe you know and as I think will have been adequately reported by the General Counsel's office, I was involved in the Ellsberg trial or came close to being involved, depending on how you want to put it.

3. In March, 1973,* the General Counsel's office was contacted by Mr. John C. Martin, at that time a senior officer in the Department of Justice. Mr. Martin asked if the Agency would be willing to provide an expert witness to testify at the trial, then in process in California. The Justice Department, in fact, specifically wanted me to be the witness in question, hoping that I could offset some of the testimony given for the defense by several of the latter's "experts", including Mr. Samuel Adams and Dr. Allen Whiting. These gentlemen had made statements which the Justice Department (correctly) considered open to factual challenge and had expressed judgmental opinions which were very much open to debate. The Department wanted to use me as, in effect, a rebuttal witness.

*I do not have the precise date immediately at hand but could unearth it if you need it.

Administrative - Internal Use Only

~~Administrative - Internal Use Only~~

4. With the DCI's concurrence, I agreed subject to certain conditions. I stressed with Mr. Martin that obviously I could not testify without the DCI's approval and, further, there was at least one potential complication.

STAT

5. The Justice Department accepted these conditions and the DCI (Dr. Schlesinger) did in fact approve my participation in the capacity of expert rebuttal witness. From 13-15 April I made the first of two trips to Los Angeles. During this first trip I was interviewed by Mr. David Nissen, the U.S. Attorney serving as prosecutor in the Government's case against Dr. Ellsberg and Anthony Russo. Nissen and I had several extensive conversations about the points on which he might want to query me on the stand. The area in which he was primarily interested was the question of what constituted damage. I explained at some length to him my personal and professional views that the arguments of people such as Dr. Whiting and Mr. Adams were fallacious. The transcripts of testimony which I had looked over at the request of the Justice Department indicated that the defense was essentially employing a reduction argument, i.e., taking each sentence in the Pentagon Papers seriatim, attempting to show that none of these individual sentences was in itself damaging and thus concluding that no damage to U.S. interests would be done if a foreign power had acquired the entire set of documents during the time period covered by the indictment. My view was that the documents had to be considered as a whole as well as analyzed sentence by sentence, and possession of the whole set could have been advantageous to a foreign power and injurious to the United States. Nissen was

Administrative - Internal Use Only

scrupulously careful in this discussion to avoid any imputation or suggestion of coaching me on what to say. He did, nonetheless, run over the sorts of questions he would want to ask on the stand and listened to my answers. When I originally went to Los Angeles on this 13-15 April trip, it was thought that I might be put on the stand while there. Some snarl developed which delayed the calling of witnesses on the schedule envisaged and I decided to come back to Washington rather than cool my heels in Los Angeles. It was understood that I would be available for recall, though I explained to Mr. Nissen that I would need at least 24 hours advance notice.

6. I made a second trip to Los Angeles on 25-26 April since Nissen intended to put Assistant Secretary Marshall Green, Ambassador Habib and myself on the stand in sequence and wanted all three of us readily available. (At his request, we all stayed in the same hotel.) During this stay, however, another snarl arose which again threw the court schedule awry, I thereupon again decided to return to Washington rather than wait in Los Angeles.

7. As things turned out, Nissen decided to call me as the last government witness. The day before I was due to leave for my third trip to Los Angeles -- this time (it was thought) actually to appear on the witness stand -- Dr. Schlesinger decided that he no longer wanted me to appear in open court under oath in connection with this trial. (To the best of my recollection, the DCI made this decision on Monday, 30 April 1973.) By direction, therefore, I contacted both Mr. Martin in the Justice Department and Mr. Nissen in Los Angeles to say that I would not be able to testify. To the best of my recollection, the news of the burglary of Dr. Ellsberg's psychiatrist's office was conveyed to the judge on the day I was to have appeared in court. The trial ended shortly thereafter and I never appeared in it.

8. One administrative point that you should be aware of is the fact that both of my trips to Los Angeles were construed, by the Agency, as official business travel. Hence, my ticket was paid for and I received appropriate per diem. I was never offered, nor could I have accepted, a witness fee.

9. The above is a summary recollection done largely from memory since -- at the joint suggestion of Mr. Martin of Justice, Mr. Nissen and the General Counsel -- I made no

Administrative - Internal Use Only
3

ADMINISTRATIVE - INTERNAL USE ONLY

notes or memoranda during the events in question. (If such memoranda had existed, they would have been liable to subpoena by the defense.) If this summary account, amplified by information the General Counsel's office can provide, is not sufficient to your needs, please let me know and I will try to reconstruct a more detailed record. At the time during which the above-described incidents occurred, I was still the DCI's Special Assistant for Vietnamese Affairs.

George A. Carver, Jr.
Deputy for National Intelligence Officers

cc: Mr. John S. Warner,
General Counsel

D/DCI/NIO/GACarver:kes

Distribution:

Original - Addressee
1 - Gen Counsel
2 - GAC Chrono
1 - RI

Administrative - Internal Use Only

3 March 1975

MEMORANDUM FOR: Mr. E. H. Knoche
Assistant to the Director

SUBJECT : "Damage Assessment" on the "Pentagon Papers"

1. The Acting Inspector General, on your behalf, has asked me to provide you (presumably for the Rockefeller Commission) a copy of the Agency's "damage assessment" on the "Pentagon Papers." I am not entirely clear what prompted this request or precisely what it is you want. In a sense, there is no such document and to understand what it is we do have, you need to know a little background.

2. The "Pentagon Papers" story broke in the Sunday edition of the New York Times on 13 June 1971. At that time, no one in the Agency had ever seen a full set of these documents. Consequently, we did not know the magnitude or precise nature of the leak involved. In the ensuing three weeks, the following events took place:

a. On Thursday, 24 June -- at the oral direction of the then DCI (Mr. Helms) -- I organized a small group of Agency officers who went to the State Department to look at the Pentagon Papers (State, by then, having been given a set) to assist in preparing an "exclusion list" for use by lawyers in the Justice Department in support of their request for a permanent injunction to follow a restraining order issued on 15 June. The hearings on the permanent injunction were to begin on Friday, 25 June. This Agency group included

STAT

[redacted] and one or two others whose names I do not now remember. The State exercise -- more or less supervised by Mr. William Macomber (then Assistant Secretary for Administration, now Ambassador to Turkey) -- was quite disorganized and, indeed, very much of a Chinese fire drill. The exclusion lists were

Administrative - Internal Use Only

not particularly well prepared and the lists that were prepared were not particularly well handled by Mr. Macomber. On Saturday, 19 June, the U.S. District Judge had refused to enjoin the Times but the 2nd U.S. Court of Appeals immediately issued a restraining order to allow the government to appeal.

b. A day or two before (I am not precisely sure when) I had attended a meeting in the Pentagon chaired (to the best of my recollection) by Mr. Daniel Henkin, then Assistant Secretary for Public Affairs. At that interagency meeting, each agency in the national security community was asked to review the entire collection of 46 volumes to determine what material therein was classified and would have an adverse impact if put into the public domain.

c. At the same time, there was a separate exercise going on in the Pentagon under the direction of J. Fred Buzhardt, then the Defense Department's General Counsel. I talked with Mr. Buzhardt, but to the best of my recollection we did not actively participate in that review, although Mr. Coffey, then Deputy Director for Support, attended several meetings.

d. On 30 June we (the Agency) received a complete set of the Pentagon Papers from the Defense Department. I assembled a task force of Agency officers who began reviewing them -- a process which involved having every volume read by at least two officers. This task was completed on or about 6 July and resulted in a looseleaf notebook, the original (and only copy) of which is in my possession. By the time this exercise was completed, the project of a consolidated, interagency damage assessment had been abandoned.

e. On 6 July (Tuesday), [] drafted a summary of the findings reflected in the notebook described above. On 7-8 July (Wednesday-Thursday), I reworked []'s draft and expanded it somewhat. My efforts resulted in an 8 July blind memorandum (i.e., not addressed to any recipient) whose subject was "The 'Pentagon Papers.'" STATINTL

Administrative - Internal Use Only

(We cannot locate a copy of Mr. [] initial draft, which we think was destroyed.)

STAT

f. I wrote this somewhat expanded memorandum at Mr. Helms' request because he wanted a document surveying the problem which he could give to the chairmen (and possibly the members) of our Congressional oversight committees. He gave a copy to Congressman Mahon, the Chairman of the House Appropriations Committee (and of its CIA subcommittee) on Friday, 9 July. Our records do not reflect Mr. Helms having given it to any other members of Congress and I am not aware of his having done so.

3. What is attached is that 8 July memorandum, together with two transmittal notes: one to the General Counsel indicating that he also received a copy, the other to Mr. John Clarke (then D/PPB). The latter transmittal note states that in passing the document to Chairman Mahon, Mr. Helms agreed that it could be read by other members of his CIA subcommittee and by the senior staff members thereof. The 13 August note to Mr. Clarke also indicates that a copy was given to the PFIAB.

4. I believe the 8 July memorandum is the document you want, but three points should be borne in mind regarding this whole exercise:

a. It was done in considerable haste and what resulted was really a "first cut." As events developed Mr. Helms did not feel there was any need for further work on this project. Consequently, these rough initial assessments were never refined.

b. The notebook, which certainly can be reproduced for the Commission if the latter so desires, is an inherently misleading document, or at least one that readily lends itself to misinterpretation by being taken out of context. The officers on the crash task force were told to comb through the 46 "Pentagon Papers" volumes, note any reference to CIA and make a rough assessment of damage that might result from the disclosure of that particular item. They were told, in effect, to use a vacuum

-3-

Administrative - Internal Use Only

cleaner approach on this first cut. Consequently, many of the points they picked up are relatively trivial or relate to items where the damage is not particularly significant. No attempt was made in the preparation of the notebook to look at the damage possibly done by the work as a whole. It would, therefore, be misleading to consider the total damage as being nothing more than the sum of the individual items picked up from the notebook.

c. My 8 July memorandum is a little broader but it too was a quick cut at a preliminary assessment and not a final, considered, coordinated appraisal. It should, therefore, be read for what it was (and nothing more). In particular, it should not be regarded as a definitive "damage assessment."

STATINTL

George A. Carver, Jr.
Deputy for National Intelligence Officers

Attachment

O/D/DCI/NIO:GACarver/mee

Distribution

Orig - Addressee

1 - General Counsel

1 - Legislative Counsel

1 - A/IG

1 - AD/DCI/IC

1 - Rockefeller Commission file w/att *det*

1 - D/NIO Chrono w/att

1 - NIO/RI w/att

1 - Pentagon Paper Notebook ✓

-4-

Administrative - Internal Use Only

13 Aug 77

Mr. John M. Clarke, D/PPB

GACarver, Jr.

25X1

1. Per our lunchtime conversation in July, attached for your information and use is a copy of a memorandum on the Pentagon papers prepared at the Director's behest. This memorandum was originally drafted for use with Congressman Mahon and a copy was given to him for perusal by the CIA Subcommittee of the House Appropriations Committee and the senior staff members thereof. A copy was also given to the PFIAB.

N.B.

2. The memorandum was fairly carefully drafted. The intent was to cover those points which ought to be treated but, at the same time, to present them in such a way that no damage would be done if this paper should fall into unfriendly hands. This double objective accounts for the rather elliptical or allusive way in which some of the topics are treated.

George A. Carver, Jr.
Special Assistant for Vietnamese Affairs

Attachment

"The 'Pentagon Papers'" - 8 July 1971

1 - Pentagon Papers file
1 - Mac Choud

13 July 1971

The General Counsel

GACarver, Jr.

Attached is the memorandum of which I spoke at our lunch on 13 July. It was drafted for the Director's use with our Congressional committees and a copy of it was in fact given to Chairman Mahon on Friday, 9 July.

George A. Carver, Jr.
Special Assistant for Vietnamese Affairs

Attachment

"The 'Pentagon Papers'"

- 1 - Pentagon Papers file
- 1 - GAC Chrono ✓

OFFICIAL ROUTING SLIP			
TO	NAME AND ADDRESS	DATE	INITIALS
1	General Counsel 7D01 HQ		
2			
3			
4			
5			
6			
ACTION		DIRECT REPLY	PREPARE REPLY
APPROVAL		DISPATCH	RECOMMENDATION
COMMENT		FILE	RETURN
CONCURRENCE		INFORMATION	SIGNATURE
Remarks:			
<p>Attached is a package sent to Mr. Knoche on the "Pentagon Papers" prepared at his request.</p> <p style="text-align: right;">George A. Carver, Jr. D/DCI/NIO</p> <p>cc: OLC IG AD/DCI/IC</p>			
FOLD HERE TO RETURN TO SENDER			
FROM: NAME, ADDRESS AND PHONE NO.			DATE
George A. Carver, Jr. 7E47 HQ			3/3
UNCLASSIFIED		CONFIDENTIAL	SECRET

FORM NO. 1-67

237

Use previous editions

(40)

Page Denied

Sanitized Copy Approved for Release 2009/11/12 : CIA-RDP93B01194R000900090005-9

It has intensified its special war in Laos, engineered the coup d'etat in Pnom Penh and openly sent U.S. troops to invade Cambodia, thus widening the war to the whole of Indochina and seriously threatening peace in Asia and the world.

The deadlock of the Paris conference on Viet Nam is imputed to the Nixon administration's policy of aggression.

Faced by U.S. obduracy and new military adventures, the Vietnamese, Lao and Khmer peoples, in response to the appeal of the Indochinese People's Summit Conference, have strengthened their solidarity and are resolved to push ahead their fight, dealing the U.S. aggressors and their lackeys with stunning return blows, and winning big victories in all fields, both militarily and politically.

The South Viet Nam people have foiled in great part the U.S. "Vietnamization" of the war, and will certainly defeat it completely.

In South Viet Nam urban centers, a widespread movement is mounting which draws in peoples of all walks of life: school children, students, newsmen, artists, writers, intellectuals, religious communities and labouring people, many personalities in political circles, even disabled veterans of the Saigon army. They demand peace, independence, neutrality, democratic liberties, improvement of the living conditions, an end to the U.S. war of aggression, U.S. withdrawal from South Viet Nam, renouncement of Thieu-Ky-Khiem and the formation in Saigon of an administration which will stand for peace, independence, neutrality and democracy, and be prepared to engage in serious talks with the Provisional Revolutionary Government of the Republic of South Viet Nam so as to achieve peace and national concord.

Highly indignant at the Nixon administration's policy of prolonging and widening the war, and faced by the risks and disastrous effects of that policy, large sectors of the American people have waged ever stronger struggle against it. They demand that the U.S. Government put an end to the war immediately, bring the American G.I.'s home at once, and let the South Viet Nam people settle themselves their internal affairs without foreign interference.

The peoples all over the world sternly condemn the Nixon administration's policy of war and aggression, the Nixon doctrine of making Asians fight Asians. They enthusiastically support the just cause of the Indochinese peoples and demand that the U.S. withdraw rapidly from Indochina so that peace may be soon re-established in that area.

Initiatives To Make The Paris Conference Progress

To respond to the deep desire for peace of broad sectors of the people in South Viet Nam, in the United States and in the world, on the instructions of the Provisional Revolutionary Government of the Republic of South Viet Nam, I would like to further elaborate on a number of points in the 10-point overall solution as follows:

- 1--The U.S. Government must put an end to its war of aggression in Viet Nam, stop the policy of "Vietnamization" of the war, totally withdraw from South Viet Nam troops, military personnel, weapons, and war materials of the United States as well as troops, military personnel, weapons, and war materials of the other foreign countries in the U.S. camp, without posing any condition whatsoever, and dismantle all U.S. military bases in South Viet Nam.

IV. 18 Sep 70

L 3

SOUTH VIETNAM,

In case the U.S. Government declares it will withdraw from South Viet Nam all its troops and those of the other foreign countries in the U.S. camp by June 30, 1971, the People's Liberation Armed Forces will refrain from attacking the withdrawing troops of the United States and those of the other foreign countries in the U.S. camp, and the parties will engage at once in discussions on:

1--The question of ensuring safety for the total withdrawal from South Viet Nam of U.S. troops and those of the other foreign countries in the U.S. camp.

--The question of releasing captured militarymen.

2--The question of Vietnamese armed forces in South Viet Nam shall be resolved by the Vietnamese parties among themselves.

3--The warlike and fascist Thieu-Ky-Khiem administration, an instrument of the U.S. policy of aggression, are frantically opposing peace, striving to call for the intensification and expansion of the war, and for the prolongation of the U.S. military occupation of South Viet Nam, and are enriching themselves with the blood of the people. They are serving the U.S. imperialist aggressors who massacre their compatriots and devastate their country. They have stepped up the "pacification" campaigns to terrorize the people and hold them in the vice of their regime, set up a barbarous system of jails of the type of "tiger cages" in Can Dao and established a police regime of the utmost cruelty in South Viet Nam. They carry out ferocious repression against those who stand for peace, independence, neutrality and democracy, regardless of their social stock, political tendencies and religions. They repress even those who are not of their clan. They increase forcible pressganging and endeavour to plunder the property of the South Viet Nam people so as to serve the U.S. policy of "Vietnamization" of the war. The restoration of genuine peace in South Viet Nam necessitates the formation in Saigon of an administration without Thieu, Ky, and Khiem, an administration which stands for peace, independence, neutrality, which improves the people's living conditions, which ensures democratic liberties such as freedom of speech, freedom of press, freedom of assembly, freedom of belief, etc., and releases those who have been jailed for political reasons, and dissolves concentration camps so that the inmates there may return to and live in their native places. The Provisional Revolutionary Government of the Republic of South Viet Nam is prepared to enter into talks with such an administration on a political settlement of the South Viet Nam problem so as to put an end to the war and restore peace in Viet Nam.

4--The South Viet Nam people will decide themselves the political regime of South Viet Nam through really free and democratic general elections, elect a national assembly, work out a constitution of a national and democratic character and set up a government reflecting the entire people's aspirations and will for peace, independence, neutrality, democracy, and national concord.

The general elections must be held in a really free and democratic way. The modalities of the elections must guarantee genuine freedom and equality during the electoral campaigns and vote proceedings to all citizens, irrespective of their political tendencies, including those who are living abroad. No party shall usurp for itself the right to organize general elections and lay down their modalities. The general elections organized by the U.S. puppet administration in Saigon at the bayonets of the U.S. occupying troops cannot be free and democratic.

IV. 18 Sep 70

L 4

SOUTH VIETNAM

A provisional government of broad coalition is indispensable for the organization of really free and democratic general elections and also for ensuring the right to self-determination of the South Viet Nam people during the transitory period between the restoration of peace and the holding of general elections.

The provisional coalition government will include three components:

- Persons of the Provisional Revolutionary Government of the Republic of South Viet Nam.
- Persons of the Saigon administration, really standing for peace, independence, neutrality, and democracy.
- Persons of various political and religious forces and tendencies standing for peace, independence, neutrality, and democracy including those who, for political reasons, have to live abroad.

The provisional coalition government will implement the agreements reached by the parties.

The provisional coalition government will carry out a policy of national concord, ensure the democratic freedoms of the people, prohibit all acts of terror, reprisal, and discrimination against those who have collaborated with either side, stabilize and improve the living conditions of the people and organize general elections to form an official coalition government.

The provisional coalition government will pursue a foreign policy of peace and neutrality, practice a policy of good neighborhood with the Kingdom of Laos and the Kingdom of Cambodia, respect the sovereignty, independence, neutrality, and territorial integrity of these two countries. It will establish diplomatic relations with all countries regardless of their political regime, including the United States, in accordance with the five principles of peaceful coexistence.

6--Viet Nam is one, the Vietnamese people is one. The reunification of Viet Nam will be achieved step by step, by peaceful means, on the basis of discussions and agreements between the two zones, without coercion or annexion from either side, without foreign interference. The time for reunification as well as all questions relating to the reunification will be discussed and agreed upon by both zones. Pending the peaceful reunification of the country, the two zones will re-establish normal relations in all fields on the basis of equality and mutual respect, and will respect each other's political regime, internal and external policies.

7--The parties will decide together measures aimed at ensuring the respect and the correct implementation of the provisions agreed upon.

8--After the agreement on and signing of accords aimed at putting an end to the war and restoring peace in Viet Nam, the parties will implement the modalities that will have been laid down for a cease-fire in South Viet Nam.

To attain a peaceful settlement of the Viet Nam problem, the Provisional Revolutionary Government of the Republic of South Viet Nam declares its readiness to get henceforth in touch with the forces or persons of various political tendencies and religions in the country and abroad, including members of the present Saigon administration, except Thieu, Ky and Kiem."

My statement at this 84th session of the Paris conference on Viet Nam today makes clearer some of the 10-point overall solution. It faithfully reflects the Vietnamese people's legitimate demands and conforms with the aspirations for peace of the peoples in the United States and the world.

2 - (3)

14. 20 JUNE 1971 DRV 7-Point Proposal (Private Meeting)

PRIVATE PROPOSAL

NORTH VIETNAMESE 9-POINT PROPOSAL
AT PRIVATE MEETING JUNE 26, 1971
MADE PUBLIC AT PARIS, JANUARY 31, 1972

1. The withdrawal of the totality of U.S. forces and those of foreign countries in the U.S. camp from South Vietnam and other Indochinese countries should be completed within 1971.

2. The release of all military men and civilians captured in the war should be carried out in parallel and completed at the same time as the troop withdrawals mentioned in Point 1.

3. In South Vietnam the U.S. should stop supporting Thieu/Ky/Khiem so that there may be set up in Saigon a new Administration standing for peace, independence, neutrality, and democracy. The Provisional Revolutionary Government of the Republic of South Vietnam will enter into talks with that Administration to settle the internal affairs of South Vietnam and to achieve national concord.

4. The United States Government must bear full responsibility for the damages caused by the United States to the peace of the whole of Vietnam. The government of the Democratic Republic of Vietnam and the Provisional Revolutionary Government of the Republic of South Vietnam demand from the U.S. Government reparations for the damage caused by the U.S. in the two zones of Vietnam.

5. The U.S. should respect the 1954 Geneva Agreements on Indochina and those of 1962 on Laos. It should stop its aggression and intervention in the Indochinese countries and let their people settle by themselves their own affairs.

6. The problems existing among the Indochinese countries should be settled by the Indochinese parties on the basis of mutual respect for the independence, sovereignty, territorial integrity and non-interference in each other's affairs. As far as it is concerned, the Democratic Republic of Vietnam is prepared to join in resolving such problems.

7. All the parties should achieve a cease-fire after the signing of the agreements on the above mentioned problems.

8. There should be an international supervision.

9. There should be an international guarantee for the fundamental national rights of the Indochinese peoples, the neutrality of South Vietnam, Laos, and Cambodia, and lasting peace in this region.

The above points form an integrated whole and are closely related to one another.

considered our proposals of October 11 a negotiating ploy and therefore, by making them public and by President Thieu publicly committing himself to this evolution, we added a crucial new ingredient to the situation which we hope may unlock some of the problems.

We may be unduly influenced by our own bureaucratic experience, but it is not unknown that governments delay acting on things unless there is some impetus that requires a decision and that if something is painful or difficult, there is a tendency to push it into the future. . . .

Q. Dr. Kissinger, you described a process of negotiation that was taking place secretly over a period of several months and then it suddenly stopped. You have received no answer from the other side from November on. Why do you think the process stopped?

Dr. Kissinger: Let me be precise about what happened. The easy explanation is that they objected to our proposal, but that could not be true, because we submitted our proposal on October 11. We received a rather conciliatory reply, not as to substance, but as to the willingness to meet, on October 25, as I recall, in which they pointed out to us that our proposed date of November 1 was not possible and for the first time in our experience with them, even

gave us the reasons why it was not possible.

Our experience has been that they would never accept the date we proposed. That has never happened, so they gave us another date and explained why that other date was preferable for them. We accepted that other date, which was November 20.

On November 17, or three days before that meeting, they notified us that Le Duc Tho was ill. Now everyone who has been engaged in these negotiations knows that in his absence no major change can occur. We tested it ourselves in our experience by meeting five times alone with Minister Xuan Thuy, whom we respect. It is no reflection on Minister Xuan Thuy, it is simply a fact of the power relationship in Hanoi, that Le Duc Tho, being a member of the Politburo, has authority that no official of the Ministry of Foreign Affairs has.

So . . . what happened between October 25 and November 17 . . . is a question that also occupies us. . . .

Q. What have you done to try to contact them to try to get it started again?

Dr. Kissinger: As I have pointed out, after they turned it down on November 17, we told them on November 19 that we stood ready to meet at any time, and that we were awaiting their recommendations. We reiterated what I had said previously. We reiterated that we were not offering this

proposal on a take-it-or-leave-it basis; but that we were prepared to consider other proposals that they might choose to make. This is the one to which they have never responded.

Since then, we have indirectly pointed out to them that the channel was still open through a number of devices that I cannot explain to you, but which were not formal communications. But there can be no question that they can be under no misapprehension that we have been prepared to meet, and I can reiterate that today.

We are still ready to resume talks in either public or private channels, or by other methods with which they are familiar. So there is no question about our readiness to negotiate.

Prospects for Settlement

Q. Two specific, related questions: One, is there any specific significance to the particular timing of this revelation; and two, given the deterioration of the military situation in Laos and Cambodia and the apparent impending military buildup on the other side for Tet, what prospect, if any, is there for getting them to terms?

Dr. Kissinger: We had always thought that if our negotiations with the other side, our secret negotiations, would not make some significant progress by the time Con-

IV. 11 Dec 70

L 4

SOUTH VIETNAM

She said: The Saigon press has also denounced the fact that "American bombs, shells and defoliants have turned fertile areas into deserted land," "jeopardized agriculture," and "deprived the population of its means of living". . . . The heavy losses suffered by five northern provinces of South Viet Nam in the recent floods were the obvious consequences of the destruction of villages and devastation of hills and woods in South Viet Nam by U.S. bombs, shells and toxic chemicals.

Mrs Nguyen Thi Binh also categorically refuted the U.S. arguments to justify its chemical warfare in South Viet Nam, and quoted the above commission's conclusion as saying, "U.S. war crimes are not isolated cases but stem from the American administration policy. That policy leads to the extermination of the Vietnamese people and turns the American soldiers into savage beasts."

After emphasizing that the Vietnamese people are more determined than ever to step up their fight to defeat the U.S. aggressors completely, Mrs Nguyen Thi Binh declared that "whether or not the Paris conference on Viet Nam moves forward depends on the serious or non-serious response of the U.S. to the fundamental question" raised in the R.S.V.N. P.R.G.'s September 17, 1970 initiative.

After delivering her prepared statement, Mrs Nguyen Thi Binh read the following declaration concerning a ceasefire:

1--Ceasefire will be carried out between the South Viet Nam People's Liberation Armed Forces and the troops and military personnel of the U.S. and the other foreign countries in the American camp immediately after the U.S. Government declares to withdraw from South Viet Nam all troops and military personnel of the U.S. and the other foreign countries of the American camp before June 30, 1971. The parties will discuss at once the question of ensuring safety for the withdrawal from South Viet Nam of all U.S. troops and troops of the other foreign countries in the American camp and the problem of releasing captured militarymen.

2--Ceasefire will be carried out between the South Viet Nam People's Liberation Armed Forces and the armed forces of the Saigon administration immediately after the Provisional Revolutionary Government of the Republic of South Viet Nam and a Saigon administration without Thieu, Ky and Khieu that approves peace, independence, neutrality and democracy, agree with each other on the formation of a provisional coalition government including three components so as to organize general elections as stipulated in the R.S.V.N. P.R.G. September 17, 1970 statement.

3--The parties will define together measures to ensure the respect and correct implementation of the points agreed upon.

Mrs Nguyen Thi Binh also pointed out that the R.S.V.N. P.R.G. and the command of the South Viet Nam people's liberation army have ordered suspension of military attacks for 10 days altogether on the occasion of Christmas, New Year's Day and Tet (lunar New Year's Day).

Concerning the "proposal" made today by the U.S. and Saigon delegates for the discussion tomorrow, December 11, 1970, of the so-called "exchange of prisoners of war," Mrs Nguyen Thi Binh declared: If the U.S. declares to withdraw from South Viet Nam all U.S. troops and troops of the other foreign countries in the U.S. camp before June 30 1971, the parties will discuss right today, December 10, the question of releasing captured militarymen.

1--Regarding the deadline for the total withdrawal of U.S. forces:

The U.S. Government must put an end to its war of aggression in Viet Nam, stop the policy of "Vietnamization" of the war, withdraw from South Viet Nam all troops, military personnel, weapons and war materials of the United States and of the other foreign countries in the U.S. camp, and dismantle all U.S. bases in South Viet Nam, without posing any condition whatsoever.

The U.S. Government must set a terminal date for the withdrawal from South Viet Nam of the totality of U.S. forces and those of the other foreign countries in the U.S. camp:

If the U.S. Government sets a terminal date for the withdrawal from South Viet Nam, in 1971 of the totality of U.S. forces and those of the other foreign countries in the U.S. camp, the parties will at the same time agree on the modalities:

A) Of the withdrawal in safety from South Viet Nam of the totality of U.S. forces and those of the other foreign countries in the U.S. camp.

B) Of the release of the totality of militarymen of all parties and of the civilians captured in the war (including American pilots captured in North Viet Nam), so that they may all rapidly return to their homes.

These two operations will begin on the same date and will end on the same date.

A cease-fire will be observed between the South Viet Nam People's Liberation Armed Forces and the Armed Forces of the United States and of the other foreign countries in the U.S. camp as soon as the parties reach agreement on the withdrawal from South Vietnam of the totality of U.S. forces and those of the other foreign countries in the U.S. camp.

2--Regarding the question of power in South Viet Nam:

The U.S. Government must really respect the South Viet Nam people's right to self-determination, put an end to its interference in the internal affairs of South Viet Nam, cease backing the bellicose group headed by Nguyen Van Thieu at present in office in Saigon, and stop all manoeuvres, including tricks on elections, aimed at maintaining the puppet Nguyen Van Thieu.

The political, social, and religious forces in South Viet Nam aspiring to peace and national concord will use various means to form in Saigon a new administration favoring peace, independence, neutrality, and democracy. The Provisional Revolutionary Government of the Republic of South Viet Nam will immediately enter into talks with that administration in order to settle the following questions:

A) To form a broad three-segment government of national concord that will assume its functions during the period between the restoration of peace and the holding of general elections and will organize general elections in South Viet Nam.

A cease-fire will be observed between the South Viet Nam People's Liberation Armed Forces and the armed forces of the Saigon administration as soon as a government of national concord is established.

IV. 1 Jul 71

L 6

SOUTH VIETNAM

B) To take concrete measures with the required guarantees so as to prohibit all acts of terror, reprisal, and discrimination against persons having collaborated with one or the other party, to ensure every democratic liberty to the South Vietnam people, to release all persons jailed for political reasons, to dissolve all concentration camps and to liquidate all forms of constraint and coercion so as to permit the people to return to their native places in complete freedom and to freely engage in their occupations.

C) To see that the people's conditions of living are stabilized and gradually improved, to create conditions allowing everyone to contribute his talents and efforts to heal the war wounds and rebuild the country.

D) To agree on measures to be taken to ensure the holding of genuinely free, democratic, and fair general elections in South Vietnam.

3--Regarding the question of Vietnamese armed forces in South Viet Nam:

The Vietnamese parties will together settle the question of Vietnamese armed forces in South Viet Nam in a spirit of national concord, equality, and mutual respect, without foreign interference, in accordance with the post-war situation and with a view to making lighter the people's contributions.

4--Regarding the peaceful re-unification of Viet Nam and the relations between the north and the south zones:

A) The re-unification of Viet Nam will be achieved step by step, by peaceful means, on the basis of discussions and agreements between the two zones, without constraint and annexation from either party, without foreign interference.

Pending the re-unification of the country, the north and the south zones will re-establish normal relations, guarantee free movement, free correspondence, free choice of residence, and maintain economic and cultural relations on the principle of mutual interests and mutual assistance.

All questions concerning the two zones will be settled by qualified representatives of the Vietnamese people in the two zones on the basis of negotiations, without foreign interference.

B) In keeping with the provisions of the 1954 Geneva agreements on Vietnam, in the present temporary partition of the country into two zones, the north and the south zones of Viet Nam will refrain from joining any military alliance with foreign countries, from allowing any foreign country to have military bases, troops and military personnel on their soil, and from recognizing the protection of any country, of any military alliance or bloc.

5--Regarding the foreign policy of peace and neutrality of South Vietnam:

South Vietnam will pursue a foreign policy of peace and neutrality, establish relations with all countries regardless of their political and social regime, in accordance with the five principles of peaceful coexistence, maintain economic and cultural relations with all countries, accept the cooperation of foreign countries in the exploitation of the resources of South Vietnam, accept from any country economic and technical aid without any political conditions attached, and participate in regional plans of economic cooperation.

IV. 1 Jul 71

L 7

SOUTH VIETNAM

On the basis of these principles, after the end of the war, South Vietnam and the United States will establish relations in the political, economic, and cultural fields.

6--Regarding the damages caused by the United States to the Vietnamese people in the two zones:

The U.S. Government must bear full responsibility for the losses and the destructions it has caused to the Vietnamese people in the two zones.

7--Regarding the respect and the international guarantee of the accords that will be concluded:

The parties will find agreement on the forms of respect and international guarantee of the accords that will be concluded.

Ladies and gentlemen,

With this seven-point statement, the Provisional Revolutionary Government of the Republic of South Viet Nam has once again clearly shown its goodwill for peace. These correct proposals and this serious attitude will no doubt win the approval and the vigorous support of freedom- and justice-loving governments and peoples the world over.

We are firmly convinced that the South Viet Nam people, in the cities as well as in the countryside, will, together with the Provisional Revolutionary Government, struggle with all their strength to end the U.S. war of aggression, to bring about peace and independence to the fatherland, and to achieve the broad concord of the whole nation. We are confident that the North Viet Nam people will promote their union with the South Viet Nam people and will unreservedly support the correct proposals of the National Front for Liberation and the Provisional Revolutionary Government of the Republic of South Viet Nam. We firmly believe that the forces of freedom and peace in the United States, together with the Vietnamese people will struggle for the end of the war in Viet Nam, in the interest of the Vietnamese people, the American people, and world peace.

We call on the U.S. Government to give a serious response to the new initiative that we have put forward at this session so as [to] allow the Paris conference on Viet Nam to progress.

ELLSBERG ADMITS GIVING PENTAGON DOCUMENTS TO U.S. PRESS

Liberation Radio [Clandestine] in Vietnamese to South Vietnam 2300 GMT 29 Jun 71 S

[Text] According to reports from the United States, American intellectual Dr Daniel Ellsberg on 28 June proudly surrendered at the federal courthouse in Boston, where he admitted that he had given the New York TIMES the classified Pentagon document that reveals the origins of the war of aggression in Vietnam, as well as the criminal, perfidious schemes and tricks of the U.S. ruling clique.

At the court, Mr Ellsberg told newsmen: "I gave the Pentagon papers to the Senate Foreign Relations Committee and to the American people through the American press."

Speaking to the large crowd of Americans who gathered at the courthouse, he said: "I gave the so-called classified Pentagon documents to the Senate Foreign Relations Committee and to the American people. After some 9,000 more Americans had been killed. I can only regret that I did not make the information known to the American public earlier. However, I have done so. I acted on my own initiative. As an American citizen, a responsible citizen, I can no longer take part in withholding this information from the American people."

To be properly understood, Hobbes must be carefully read, more carefully than he often is. His reputation for consistency is not always merited, and by it one should not be misled into a vain attempt to force his ideas into a rigid mould of self-consistent doctrine. His insights are often better than his arguments; his asides, often more significant than his exercises in Euclidean definition. Yet though Hobbes merits, and requires, detailed analysis; one should not go too far in this direction. Hobbes was, in effect, his own surest critic when he wrote that "...it is not the bare words, but the scope of a writer, that giveth the true light, by which any writing is to be interpreted; and they that insist upon single texts, without considering the main design, can derive nothing from them clearly".¹

To some extent, Hobbes' political works were, as he put it, "occasioned by the disorders" of the times in which they were written.² His writings, especially the

1. Lev. xliii 602.

2. Lev. Review & Conclusion, 713. In reading Hobbes it should not be forgotten that these "disorders" included the Thirty Years War as well as the English Civil Wars. Hobbes spent over a decade on the continent during the time the Thirty Years War was in progress and the main tenets of his political theory may all be found in the Elements of Law, which he probably wrote in 1640.

but rather by casting atoms of scripture
as dust before men's eyes, make every thing more
obscure than it is, an ordinary artifice of those
that seek not the truth but their own advantage.

2 4(3)
NOTES ON THE TESTIMONY OF ALLEN S. WHITING

15,787 - Whiting describes himself as "the senior intelligence analyst for the Department of State concerning matters affecting the Far East."

15,796-7 - Again, Whiting is described as "the senior intelligence analyst in the United States Department of State with responsibility for Indochina and particularly for Vietnam."

15,802 - Whiting is asked:

Now, based on your experience as an intelligence analyst and your studies of these volumes, do you have an opinion as to whether the information in these volumes, cited as intelligence information by General Gorman, could, if released in March 1969, be used to the advantage of a foreign nation?

Whiting answers:

I cannot find any way that these materials could have been advantaged to a foreign analyst in March of 1969 operating against the United States...nor to a foreign

nation operating against the United States...I see no way in which these materials could have been used to injure the United States in March 1969.

15,803 - Same thought:

"As an intelligence analyst, I find nothing in these materials, if released in March, 1969, that could damage the national defense interests of the United States...or be prejudicial to the defense interests of the United States."

Whiting cites five reasons for these contentions:

First, the materials are dated and, hence, "have no relevance for assessing the capabilities of the United States to collect intelligence in 1969." He further alleges "the changes in technology going on month by month and year by year made it impossible for an analyst in 1969 to know our capability on the basis of materials dated 1968 and earlier."

15,804 - Second, we changed our presence in South Vietnam and in the Indochina peninsula.

15,805 - Third, we increased our POW reporting systems

-- Whiting then says a "second limitation" of these materials is "the fact that they are finished

intelligence." Whiting then goes on to develop the argument in subsequent pages that finished intelligence cannot be compromised if the person receiving it does not know the analytic techniques or sources that contributed to it. This argument is developed further on page 15,809 where Whiting contends "only information that is acquired from the original collection agency and promptly acquired by the enemy permits him to defeat that collection agency or attempt to counterintelligence move." Later on he then says the third category of information which denies this material's damaging effects is the fact that by 1969 the techniques by which the United States acquired this information were generally known and certainly specifically known to the enemy.

15,810 - Whiting goes into a fairly lengthy disquisition on the EC-121 shootdown of the North Koreans as an argument that somehow shows that there was no compromise on information of the North Vietnamese and the Pentagon Papers.

Comment: Whiting completely misses that -- or deliberately ignores -- the point that while it is useful to know what an

adversary's collection sources are, it is even more useful to know what he gets from them and how he puts this information together to form his finished judgments, doubly so if one can also know what those finished judgments themselves.

15,813 - Whiting then goes on to say that a fourth reason why "foreign nation could not make use of these materials in 1969 is that, for the most part, he was helpless to devise counterintelligence systems that would deny us this information."

Whiting continues the same theme in arguing "the absence of any raw intelligence material and any prompt access to that material in these documents denies an enemy agent or intelligence analyst any utility for using these documents against the interests of the United States." Here again Whiting is trying to argue in this section that the only possible damage to the United States is sources and methods compromised. He completely -- probably deliberately -- ignores the damage that can be done by allowing the enemy to have access to our finished intelligence judgments.

15,829-30 - Whiting is attempting to argue that the exposure of



25X3

25X3

[redacted]
[redacted] could not compromise or endanger the interests of the U.S. because the information is so dated. Again, he chooses to ignore the point that the Pentagon Papers exercise would demonstrate our inability to protect confidentiality in a way that could easily inhibit future negotiations, particularly with governments whose leaders were paranoid on the subject of security.

15,831-2 - Whiting is equally tendentious on the subject of the extract from Chet Cooper's book. His thesis that Koysegin intended to be overheard is sheer speculation and should have been objected to by the prosecuting attorney as such.

STAT

15,849 - Whiting's prissy puritanism peeps through when he says, rather primly, "The State Department does not originate intelligence; it has no capability for acquiring it independently overseas or in the United States...." Foreign Service Officers generally resent any imputation that their job is to acquire information and that information acquired in the interests of a government is frequently described as intelligence.

15,849-50 - Whiting neglects to note that the example he is citing on these pages actually works against him. This is particularly true of his comment (on 15,850) that:

"The interpretation in October (1963) by the State Department challenged the interpretation by the military specialists in Vietnam and Washington, arguing that, contrary to their interpretation, since July the war had been going badly for the United States and the Government of Vietnam."

Surely, it would be extremely useful for a foreign government, particularly a hostile one and especially our adversary in a military struggle to know that as far back as 1963 there had been a serious difference of opinion between the State Department and

the military establishment regarding the course of the war in Vietnam. It could be argued that this fact had already been amply documented in the public press. But here, as elsewhere throughout the defense brief, no attention is paid to the fact -- and indeed its existence is ignored or denied -- that there is a world of difference between an allegation in public print and hard documented evidence from an official government record.

15,854 - There is another example of a citation that cuts exactly

against the grain of Whiting's argument. He contends:

"Any intelligence analyst, who was examining the Pentagon Papers at the highest level of analysis, by Secretaries of Defense and Secretaries of State, could be seriously misled if he did not know what the basic level inputs were to the entire intelligence collection and analysis system, and of course those inputs are nowhere included in this document."

What Whiting misses, as did Sam Adams, is that the enemy presumably has a general idea of what his own situation is -- or at least what he thinks his situation is -- and it would be extremely useful for him

to know that the highest levels of his opposing government were employing official assessments of that situation which were very wide of the mark. This would be useful both in gauging an adversary's capacity for reaction and extremely valuable as a propaganda device.

15,857 - Again Whiting: "I would have the same judgment concerning those quotations; that is, that there is no quotation from a National Intelligence Estimate contained in this document, the Pentagon papers, which could be of advantage or significant use to a foreign analyst in March, 1969, or thereafter."

15,865 - In response to a question by Nesson regarding Exhibit 6 "The Origins of Insurgency" and the excerpts from National Intelligence Estimates appearing therein, Whiting answers: "I cannot conceive of any possible advantage that could be conveyed by the contents of those excerpts from national intelligence memoranda to any foreign analyst in March of 1969."

15,869 - Whiting is asked whether any weight would be attached by a foreign analyst to the fact that the documents in Exhibits 1 through 18 were classified TOP SECRET. Whiting answers: "If he (the hypothetical foreign analyst) were someone

with experience of the U.S. documents that were classified, he would attach virtually no significance to any particular classification, either with respect to the source or the substance of that document; rather, he would look at specific material in the document and make his own independent assessment of their importance and their sensitivity."

Whiting then goes on to contend that most U.S. documents are over-classified, hence, classifications would be regarded by knowledgeable foreigners as meaningless.

15,874 - On the Diem volume, Whiting contends that "My opinion is that there is nothing in this volume which could have been of advantage to a foreign nation or a foreign government against the interests of the United States in March 1969."

15,874 - Same subject: "I cannot see any way that it could have injured the interests of the United States in March, 1969 if made available to a hypothetical foreign agent."

15,876 - Whiting tries to slide away from his absolute position

a little bit by arguing: "The identity of South Vietnamese generals in the role of U.S. officials is fully covered in previous publications, as were the relationships in Washington between agencies and between Washington and Saigon. I saw no new information that could damage the United States interests or defense security." ... "(On new information) there are very minor details as to time and place of meetings, and specific quotations from cables which were paraphrased by such writers as Hillsman and Schlesinger in their memoirs. These in no way change the substance of what was generally known before this volume was published."

15,886 - On cross-examination Whiting is asked whether the documents

he has been referring to would have been of interest to a professional analyst in the year 1969. Whiting answers: "He would have found them interesting. All intelligence analysts find materials about other countries' intelligence behavior interesting as a professional curiosity." He

then goes on to add, "I cannot see how he could find them of interest with regard to his duties."

15,892 - Nissen on cross raises the question about whether comparable documents from North Vietnam would have been of value to a U.S. intelligence analyst. Nesson (the defense counsel) objects but his objection is overruled.

15,893 - Whiting answers: "As a hypothetical analyst in 1969 dealing with these hypothetical materials coming from North Vietnam to the United States, I would not have been advantaged in my job by access to them. The change in circumstances under which both the United States and the North Vietnamese were engaged in 1969 would have vitiated the utility of these documents to me as an analyst."

Whiting, of course, is telling an outright lie and probably knows it.

TESTIMONY OF WILLIAM DAVID GERHARD

18,259 - Gerhard was in the office of the General Counsel of the

Department of Defense in December 1971 and the early months of 1972. In his words: "Specifically, I was enjoined to write evaluations of some of the volumes from the Pentagon Papers and one additional document." Prior to that he was in NSA.

18,346 - Nesson at least gets out in public statement the lunacy of the

NSA analysis, namely that Gerhard decided not to include communications intelligence items in the documents he passed to Justice. Nesson adds (as a question): "And the reason that you did so, sir, was that you decided you would rather see the defendants acquitted than to notify Justice of sensitive materials that you would not want to risk compromise of in these volumes?" Unfortunately, the judge sustained the defense's immediate objections to this question.

Kentagon 1-1-12
Notebook

NOS. 1873 and 1885

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NEW YORK TIMES COMPANY,
PETITIONER

v.

UNITED STATES OF AMERICA

UNITED STATES OF AMERICA,
PETITIONER

v.

THE WASHINGTON POST COMPANY, et al.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT AND THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES
(SECRET PORTION)

ERWIN N. GRISWOLD
Solicitor General,

Department of Justice,
Washington, D.C. 20530.

TOP SECRET

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1873

NEW YORK TIMES COMPANY,
PETITIONER

v.

UNITED STATES OF AMERICA

No. 1885

UNITED STATES OF AMERICA,
PETITIONER

v.

THE WASHINGTON POST COMPANY, et al.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT AND THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES
(SECRET PORTION)

There have been great difficulties in the presentation of this case. The United States does not know what materials are in the possession of the New York Times or the Washington Post, and neither District Court below was willing to require disclosure of these papers, even in camera, without repre-

TOP SECRET

representatives of the United States present. It would appear in evidence that the papers already published by the two newspapers bear some relation to a compilation of 47 volumes entitled "United States-Vietnam Relations--1945-1967," prepared by a Vietnam task force in the Office of the Secretary of Defense. The covers and every page in this compilation are marked "Top Secret--Sensitive."

It was obviously impossible for the United States to prove directly that the publication of the papers held by the two newspapers would involve immediate and irreparable injury to the security of the United States. The only method by which the United States could proceed was to seek to show that there were items in the 47-volume study which would have this consequence,

When it appeared to be impracticable for the Washington Post to produce in camera the papers it had, the District Court said:

"THE COURT: I think if you feel that way, because of your problems, I can proceed on the assumption that you have all the documents the government is referring to. We will proceed on that basis. If you want to show that there are some documents you don't have, you can prove it. I will proceed on the assumption you do."

Accordingly, the government introduced evidence through witnesses, and through affidavits, which made specific reference to items in the 47-volume compilation. The 47 volumes were available in the courtroom in the District of Columbia, the relevant portions being regarded as incorporated by reference in the testimony and the affidavits considered by the District Court. The 47 volumes are a part of the record in the New York Times case in the Southern District of

New York, and have been transmitted to this Court as a part of the record here.

It is to these 47 volumes that references have been made in the "Special Appendix" mentioned in the decision of the United States Court of Appeals for the Second Circuit, and in the orders entered by this Court in these cases on June 25, 1971. This is likewise true of the items included in the "supplemental list" which was filed (in accordance with the decision of the Court of Appeals for the Second Circuit, and with the orders of this Court) by 5:00 p.m. on June 25, 1971.

The purpose of this portion of the Brief for the United States is to refer to a selected few of these items and to endeavor to show that the publication of these items could have the effect of causing immediate and irreparable harm to the security of the United States. A number of these items were considered hastily by Judge Gesell during the hearing before him on Monday, June 21, 1971. No trace of criticism is intended by the observation that Judge Gesell's consideration was hasty. This was inevitable under the circumstances. Nevertheless the consideration was necessarily hasty, and the presentation with respect to it was inevitably extremely difficult since no one knows yet what documents either of the newspapers actually have. It is true that they have provided "inventories." However, these are not very helpful, and they do not, in general, identify particular documents. There are various versions of some of these documents, and the inventories do not show which version the papers have. It is also clear that they have some items

which are included in the 47 volumes.

We now turn to a few selected items from the 47 volumes which, we submit, involve a serious risk of immediate and irreparable harm to the United States and its security.

1. There are four volumes in the 47-volume compilation which are designated in their entirety. They are: Volume VI-C-1, VI-C-2, VI-C-3, and VI-C-4. These contain a comprehensive detailed history of the so-called negotiating track. Negotiations were carried on through third parties, both governments and individuals. These included the Canadian, Polish, Italian, Rumanian, and Norwegian governments. They also included individuals, some holding public office, and some private citizens, sometimes with the knowledge of their governments, and sometimes without their government's being informed.

These negotiations, or negotiations of this sort, are being continued. It is obvious that the hope of the termination of the war turns to a large extent on the success of negotiations of this sort. One never knows where the break may come and it is of crucial importance to keep open every possible line of communication. Reference may be made to recent developments with respect to China as an instance of a line of communication among many which turned out to be fruitful.

The materials in these four volumes include derogatory comments about the perfidiousness of specific persons involved, and statements which might be offensive to

nations or governments. The publication of this material is likely to close up channels of communication which might otherwise have some opportunity of facilitating the closing of the Vietnam war.

2. Closely related to this is the fact that there is much material in these volumes which might give offense to South Korea, to Thailand, and to South Vietnam, just as serious offense has already been given to Australia and Canada. South Korea, South Vietnam, and Australia have troops in Vietnam, and Thailand allows the use of airfields from which 65% of our sorties are launched.

For the past many months, we have been steadily withdrawing troops from Vietnam. The rate at which we can continue this withdrawal depends upon the extent to which we can continue to rely on the support of other nations, notably South Vietnam, Korea, Thailand, and Australia. If the publication of this material gives offense to these countries, and some of them are notably sensitive, the rate at which our own troops can be withdrawn will be diminished. This would be an immediate military impact, having direct bearing on the security of the United States and its citizens.

There are further references to these items in the "Special Appendix" filed in the United States Court of Appeals for the Second Circuit in the New York Times case, and in this Court.

3. There are specific references to the names and activities of CIA agents still active in Southeast Asia. There are references to the activities of the National Security Agency.

The items designated are specific references to persons or activities which are currently continuing. No designation has been made of any general references to CIA activities.

This may not be exactly equivalent to the disclosure of troop movements, but it is very close to it.

4. Volume V-B-4(a), pages 249-257, 259-311, contains specific reference to SEATO Contingency Plan 5 dealing with communist armed aggression in Laos. This discloses what the military plans are. The SEATO plans are continuing plans. This involves not only the disclosure of military plans, but a breach of faith with other friendly nations.

Similarly, Volume IV-A-1, pages A26 to A-31, discloses SEATO Operations Plans 4 and 6 dealing with military dispositions with respect to Laos, Cambodia, Thailand and Pakistan. These are continuing military plans made by us jointly in association with the other nations which are parties to SEATO. Such publication not only discloses the plans to possible enemies, but also involves risk of loss of the support of friendly nations.

5. Volume IV-C-6(b), page 129, sets forth the United States intelligence community's estimate of the Soviet reaction to the Vietnam War. This was made in 1967, but is in large part still applicable. The disclosure of this information will give Soviet intelligence insights into the capacity of our intelligence operations, and may strengthen them both by giving them better understanding of us, and by leading them to correct matters on their side.

6. closely related is Volume IV-C-6(b), page 157.

This is a United States intelligence board estimate of Soviet capacity to provide various types of weapons to North Vietnam. There is much about it that is current, and its disclosure to the Soviet Union would give them information which could lead to serious consequences for the United States.

7. Volume IV-C-6(b), page 168, is an internal memorandum of the Joints Chief of Staff on May 27, 1967, containing a recommendation that a nuclear response might be required in the event of a Chinese attack on Thailand. Although such a recommendation was never formally made, the disclosure that this was considered as a possibility, though in an internal memorandum, could have very serious consequences to the security of the United States.

8. Volume IV-C-7(b), pages 161-163, contains the full text of a telegram from Llewellyn Thompson when he was Ambassador to Moscow in 1968. This gives the assessment of one of our most experienced diplomats of Soviet reaction to United States course of action in Vietnam.

The publication of this telegram would provide valuable intelligence information for the Russians. It is important to them to know what we think about them. Moreover, we cannot have an effective ambassador abroad if he is not able to report candidly and in confidence to the Secretary of State and the President.

The publication of this telegram would impair Mr. Llewellyn's continuing effectiveness. He is now an important and valuable member of our SALT talks delegation dealing with strategic arms limitation, which surely directly

Page Denied

- 9 -

(c) Cutting down successful interception by our communication intelligence will directly affect our current military operations. Signal intelligence now gives direct support to our troops today, and saves many lives. It also helps, directly in the recovery of downed pilots.

An understanding of United States cryptologic capabilities has direct value to present and potential enemies of the United States. It is immediately connected with current combat operations. Signal intelligence has recovered North Vietnam plans of war operations. We have had many successes, some of which are disclosed in the designated papers. If the enemy becomes aware of these successes it would alert them to change their practices, and would materially diminish the amount of information we could obtain, with resulting immediate loss of American security and lives. We now read radio traffic which the enemy has every reason to believe is secure. Disclosing the fact that it is not secure can have immediate and serious impact.

As shown in the affidavit of Admiral Gayler, information was published in the New York Times last November about our

25X3

As a consequence,

the Chinese source closed up after the publication, and that means of information directly affecting our national security has been closed.

- 9 -

TOP SECRET

11. Finally, reference should be made to prisoners of war. We are currently engaged in discussions on the prisoner of war issue, in some cases with governments which are not wholly friendly, such as Sweden and Russia. It is obvious that these conversations are conducted on the understanding that they will be confidential, and they are not very likely to be fruitful if that confidence is broken. This is covered by the oral testimony of Mr. Doolin in both cases.

There is one of these in particular which it is very likely that we will not be able to proceed further with as a result of the publication of the papers which has already been made by the New York Times and the Washington Post. The longer prisoners are held, the more will die.

There is, finally, the whole question of the institution of the Presidency--the power constitutionally inhering in the President as Chief Executive and as Commander-in-Chief of the Army and Navy to conduct the foreign affairs of the United States in a way which will not be unduly hindered, to protect the lives and safety of men in Vietnam, and to be able to assure his top military aides, the Joint Chiefs of Staff, that the lives and safety of men in Vietnam, for whom they, and the President, and the Nation are responsible, will not be endangered or subjected to unnecessary risk. The Federal Judiciary has been referred to as "the least dangerous branch." The Presidency can go to great lengths to provide for such protection by establishing security classification schemes, and by using great care in the selection of its personnel. But, in a nation as large and complicated

as this one is, there will inevitably be weak spots in any system. When such weak spots occur, the Presidency is powerless to provide the required protection except with the aid of the courts. In a proper allocation of powers, under the separation of powers, each branch should support the other, in appropriate circumstances. Just as the executive has used its power, through United States marshals, and through military force, to enforce the judgments of the courts, the courts should support the Presidency in a narrow and limited area where such protection is needed in the effective meeting of the President's responsibility, and in the safeguarding of American lives. This is not a question of exception to the First Amendment, but of rational interpretation of that provision wholly consistent with its history and purpose.

Since the publication of materials by the Times and Post, a considerable number of communications have been received from foreign governments. Reference will be made to two of these.

On June 25, 1971, there was received from the American Ambassador to a friendly country a telegram stating that the principal minister of that country

informed me last night (June 24) that [the head of state] had instructed him to express privately and confidentially grave concern over the unauthorized publication of the classified Pentagon documents relating to Viet-Nam. [The minister] indicated that it was not the substance of these documents which upset the [head of state], but rather the principle involved, namely that highly classified confidential documents which might contain information or secret exchanges between the United States government and other governments, might irresponsibly find their way into the press. [The minister] pointed out that in his

relations with us the [head of state] is completely frank in his discussion of highly sensitive confidential matters. However, he has felt able to be frank with us because he felt that we would tightly guard the substance of confidential discussions and exchanges with him. If we are not able to do this, said [the Minister], it would obviously have a very inhibiting effect on [this nation's] ability to exchange views with us on confidential matters with full frankness.

A formal message has also been addressed to the Secretary of State by the British Ambassador, the Rt. Hon. the Earl of Cromer, in which the Ambassador says:

I write to express the concern of Her Majesty's Government about the unauthorized publication of confidential exchanges between our two governments. I am instructed to inform you that Her Majesty's Government is concerned about maintaining the general principle rather than about any specific individual items . . . Her Majesty's Government only wishes to preserve the principle that exchanges between governments should be kept confidential in the interest of good relations.

This is a great and free country. It must remain a great and free country. It has a remarkable Constitution, of which the First Amendment is surely an important part. But it is, as Chief Justice Marshall so wisely observed in the formative days of our republic, a Constitution which the court is expounding. It is a Constitution which has worked, and which must continue to work. Long experience has shown that sound constitutional construction is not to be found in absolutist or doctrinaire constructions of any of the provisions of the Constitution. It is not suggested that the First Amendment must yield to any other provision of the Constitution. It is suggested that the First

Amendment must be construed in the light of the fact that it is a part of a constitution, particularly, where foreign affairs are so directly involved, and where, in a very real sense, the workability and the integrity of the institution of the Presidency may be seriously impaired. The Constitution should be construed in such a way as genuinely to preserve a free press, while likewise leaving to the Presidency the protection which it requires for the free flow of information from foreign nations and for the free development of thought and ideas between the President and his immediate advisers.

Respectfully submitted.

Erwin N. Griswold
Solicitor General

June 1971

Orig to Mr. Carver 4/17/73 XXX 1 P M

2-4(3)

gsw

DEPARTMENT OF JUSTICE
ROUTING SLIP

TO:	NAME	DIVISION	BUILDING	ROOM
1.	Mr. Lawrence Houston		CIA	
2.				
3.				
4.				

<input type="checkbox"/> SIGNATURE	<input type="checkbox"/> COMMENT	<input type="checkbox"/> PER CONVERSATION
<input type="checkbox"/> APPROVAL	<input type="checkbox"/> NECESSARY ACTION	<input type="checkbox"/> AS REQUESTED
<input type="checkbox"/> SEE ME	<input type="checkbox"/> NOTE AND RETURN	<input type="checkbox"/> NOTE AND FILE
<input type="checkbox"/> RECOMMENDATION	<input type="checkbox"/> CALL ME	<input type="checkbox"/> YOUR INFORMATION
<input type="checkbox"/> ANSWER OR ACKNOWLEDGE ON OR BEFORE _____		
<input type="checkbox"/> PREPARE REPLY FOR THE SIGNATURE OF _____		

REMARKS

Larry,

Dave Nissen prepared these questions for George and I would appreciate your passing them on to him for review.

FROM:	NAME	BUILDING & ROOM	EXT.	DATE
	John L. Martin	FTRI 319	4551	4/16/73

GEORGE CARVER

I. Background

A. Residence

B. College Education - degrees, honors, fellowships, scholarships

II. Qualifications

A. Present Employment

1. Title or Position. (SAVA) How long? (since 1966).
2. Responsibilities: (All Agency activities on Indochina).
3. Duties: (To furnish "intelligence support" to President and Senior Advisor).
4. What does such "intelligence support" consist of? (Explain) Are these functions substantially the same for intelligence organizations in all major countries?

B. Have you been in Vietnam?

1. When, and for what period of time? and regular visits since 1969).

STAT

C. For how long has your work involved Vietnamese Affairs?

STAT

D. In your present position have you worked with Senior U.S. Officials on Vietnamese Affairs? Who, and under what circumstances?

Secretary of Defense -- weekly meetings; trips to Vietnam.

JCS, State, White -- Rostow, Kissinger.

President --

Clifford Study Group and Wise Men

E. Have you received commendations and awards for your work?

STAT

F. Have you published articles on Vietnam?

Foreign Affairs?

Asked to write by editor?

Identify Ex. K-81.

III. Exhibit 19

- A. Have you read and studied it?
Did you work with the Wheeler Report in the course of your duties in 1968? When? What were the circumstances?
- B. Could possession of Ex. 19 in 1969 by a foreign nation have been prejudicial to the defense interests of the U.S.?
- C. In what ways could Ex. 19 have been advantageous to a foreign nation or prejudicial to U.S. in 1969? (List ways)
- D. Could Ext. 19 have been of advantage to a foreign nation in 1969 even if not translated into action in combat or on battlefield?
- E. Would the value of Ex. 19 to a foreign nation in 1969 have been destroyed if the information in it were wrong? Falsified?
- F. To whom in a foreign nation could this document have been of advantage in 1969? (If not done previously, ask for duties and functions of a nation's "intelligence service.")
- G. In 1969, would there have been any difference in the utility to a foreign nation's intelligence service between Ex. 19 and public materials containing similar statements? What difference?
- H. In 1969, what weight and value would a foreign nation have ascribed to Ex. 19?
 1. Would the age of Ex. 19 have rendered it of no value to foreign nations in "69"?
 2. Was the quality of NVN intelligence in 1969 such that NVN could have had no need or use for Ex. 19?

3. Could NVN in 1969 have obtained information the same as that in Ex. 19 from other sources?
 4. Would the "open" nature of U.S. society, or the large amount of information in public sources have rendered it of no value to a foreign nation in 1969? Why?
- I. Is the table on page 4 "absolutely unintelligible? (Interpret Table (PFD)).

IV. Exhibits 1-18

- diary*
- A. Have you examined, and are you familiar with Exs. 1-18?
 - B. Could possession of Exs. 1-18 in 1969 have been advantageous to a foreign nation?
Could possession of Exs. 1-18 by a foreign nation in 1969 have been prejudicial to defense interests of the U.S.?
 - C. In what ways could Exs. 1-18 have been of advantage to a foreign nation in 1969? (Exploitation)
 1. Discloses how U.S. does business; compromise of sources, methods, technology.
 2. Utility for authenticating public documents; exemplars for deception operations.
 3. Psychological warfare; to encourage selves, demoralize adversaries.
 4. Labor saving research, compilation, authentication, leads.
 5. Informative on U.S. views on Vietnam War, and what U.S. considers sensitive.
 6. Aid and comfort to action like NVN.
 - D. In what ways could possession of Exs. 1-18 by a foreign nation in 1969 have been prejudicial to U.S. defense interest? (Impairment)

punch 7

 1. Impairment of trust and confidence of sources.
 2. Impairment of frankness of USG officials in performing functions.

-4-

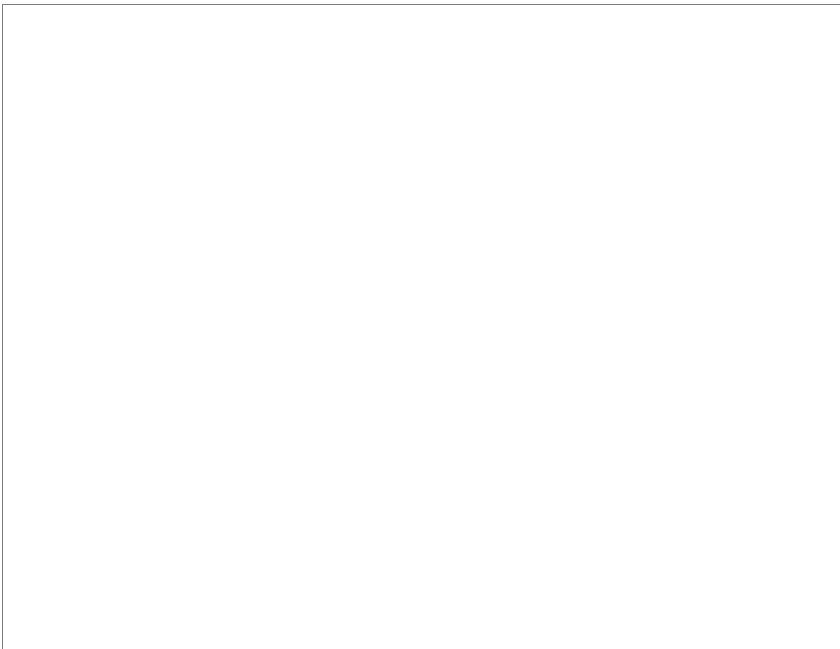
- E. In 1969, would there have been any difference in value to a foreign nation of the whole of Exs. 1-18 as compared with any single volume or extract from a volume? What difference?
- F. Would the presence of the footnotes in Exs. 1-18 have added significantly to the value of these documents to a foreign nation in 1969? (Note: "SC" indicates COMINT Channel)
- G. Would the classification of Exs. 1-18 have any significance to a foreign intelligence service's assessment of them? What?
- H. In terms of value to a foreign intelligence service, would books or memoirs such as Hilman's "To Move A Nation" be the equivalent of Ex. 9? Why Not?

V. Whiting Rebuttal

- A. Did changes in U.S. technology make it impossible for a foreign intelligence service in 1969 to assess U.S. intelligence capabilities on the basis of materials dated 1968 and earlier? Why not?
- B. Did infrared and electronic sensors substantially alter U.S. intelligence capabilities in Vietnam between 1965 and 1969?
- C. Is it true that finished U.S. intelligence could be of no use to a foreign nation in assessing U.S. intelligence capabilities?
 - 1. Could the finished intelligence in Exs. 1-18 have been advantageous to a foreign nation in assessing U.S. intelligence capabilities in 1969?
- D. Is it true that without raw data indicating source, time and place of collection, "it is impossible for an enemy to design a counter-intelligence response?
 - 1. Can finished intelligence be used by a foreign nation in designing counter-intelligence responses?
 - 2. Can finished intelligence furnish an advantage to a foreign nation quite apart from whether it discloses sources or is usable for counter-intelligence purposes? In what ways?

- E. If a foreign nation was aware that the U.S. was using intelligence collection methods, such as communications intelligence, would that knowledge mean that the foreign nation could gain no further advantage by learning the results of those collection methods?
- F. Was NVN in 1969 helpless to devise counter-intelligence systems which would deny the U.S. the kind of information in Exs. 1-18?
1. Did NVN use land lines for communication in 1969?
 2. Were NVN foreign SVN capable of using only the most simple communications systems?
 3. Were NVN forces in SVN at every level capable of employing counter-measures to protect their communications?
- G. Would the information in Ex. 6, page 233, indicate to a competent foreign intelligence analyst, the collection method used?
1. Would defendants Ex. K-81, page 362, be equally revealing?
 2. What does "SC" in footnote of Ex. 6, page 222 indicate?

H.



25X3

-6-

- I. Could the materials in Exs. 1-18 from National Intelligence Estimates (NIE) have been of advantage to a foreign nation in 1969? In what way?
- J. Is it true that a foreign intelligence analyst would attach virtually no significance to the classification indicated on Exs. 1-18.
- K. Is it true that disclosure of the information in Exs. 1-18 in 1969 could not have led to the death of a single American or allied life?
- L. In your judgement, what monetary value would Exs. 1-18 have had as intelligence information to a foreign nation in 1969?